

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Consent to)	IB Docket No. 02-111
Transfer Control Filed by)	
)	
BELL ATLANTIC NEW ZEALAND)	
HOLDINGS, INC.)	
)	
And)	
)	
PACIFIC TELECOM, INC.)	
)	

PETITION TO DENY OF THE GOVERNOR OF GUAM

The Governor of Guam (“The Governor of Guam”) hereby petitions the Commission to deny the above-referenced applications for consent to transfer control of the licenses of Micronesian Telecommunications Corporation (“MTC”) and its subsidiary, GTE Pacifica Inc. (“GTE Pacifica”), from Bell Atlantic New Zealand Holdings, Inc. (“BANZHI”) to Pacific Telecom Inc. (“PTI”).¹

As shown below, the proposed sale is not in the public interest and should be denied. Were the sale to be allowed, beneficial nationwide calling plans and associated low cost pricing

¹ PTI and BANZHI filed joint applications seeking authorization for consent to transfer control of 1) satellite earth station authorizations held by GTE Pacifica; 2) cellular telephone authorization held by GTE Pacifica; 3) a cable landing license held by GTE Pacifica; 4) Section 214 blanket domestic authorizations held by MTC; and 5) Section 214 international and blanket domestic authorizations held by GTE Pacifica (“Applications”). See Commission Seeks Comment on Applications for Consent to Transfer Control Filed by Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc., *Public Notice*, DA 02-1173, (May 16, 2002) (“Public Notice”).

would be lost, in violation of Sections 254(g) and 202(a) of the Communications Act of 1934, as amended (“Act”). Moreover, since the loss of such services constitutes a *de facto* discontinuance, reduction or impairment of service, the proposed transaction also violates Section 214(a) of the Act. The Applications should also be denied since foreign control over a fiber optic submarine cable connecting two strategically-located domestic, U.S. insular points would not be in the public interest. Finally, the Public Notice soliciting comment on the proposed transaction is deficient since it fails to give adequate notice as to the proposed transaction’s impact in Guam.

I. BACKGROUND

A. Proposed Transaction

PTI, the proposed transferee, was formed to acquire the assets of MTC and its subsidiary, GTE Pacifica, both affiliates of Verizon Communications, Inc. (“Verizon”). PTI has three shareholders: Prospector Investment Holdings Inc., a corporation of the Cayman Islands, British West Indies, which holds 50% of the equity of PTI, THC Communications Corp. and Missouri Holdings Corp., both corporations organized under the laws of the Commonwealth of the Northern Mariana Islands (“CNMI”), holding the remaining 30% and 20% of the equity of PTI, respectively. The applicants are seeking Commission consent to the transfer of control of the licenses of MTC and GTE Pacifica to PTI. Under the proposed transaction, PTI would have foreign ownership in an amount up to 72.1%, with authorization to increase that level to 87.1%.²

² *In re Pacific Telecom Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Common Carrier Licensee GTE Pacifica Inc.* (Apr. 11, 2002).

B. GTE Pacifica's Guam Operations

GTE Pacifica is one of only two nationwide long distance carriers providing service in Guam. According to the Applications, GTE Pacifica holds an FCC International 214 authorization to provide international service between Guam and foreign points, and holds a domestic interstate blanket 214 authorization to provide interexchange service between Guam and domestic U.S. points. GTE Pacifica also controls a major cable landing facility located on U.S. military land in Guam. This cable landing facility constitutes one of the end points for a submarine fiber optic cable which runs between Guam and various points in the CNMI.

The Governor of Guam was an active party in the Commission's Rate Integration Proceedings that were instituted to determine the applicability and procedures for the implementation of Section 254 (g) of the Act. This proceeding resulted in the Commission's Rate Integration Order for the insular areas. This order mandated that national carriers that serve Guam make the same rates and special calling plans available to the residents of Guam as offered to the consumers in the rest of the United States. The Governor of Guam strongly supports the offering of the same rates and plans to the residents of Guam that are offered to other consumers throughout the rest of the United States.

This Petition and the concerns expressed herein are exclusively limited to the operations of GTE Pacifica in Guam. The Governor of Guam expresses no position with respect to the operations of MTC and GTE Pacifica in the CNMI. The Governor of Guam does not *per se* oppose the sale of GTE Pacifica. However, any sale of the company must safeguard rate integration and protect consumers in Guam.

II. THE PROPOSED SALE IS NOT IN THE PUBLIC INTEREST AND SHOULD BE DENIED

The Applications should be denied for the reasons set forth below.

A. The Proposed Sale Would Violate Sections 254(g) and 202(a) of the Act

The Applications should be denied because the proposed sale would erode the implementation of rate integration in Guam, violating Section 254(g) of the Act,³ and result in unlawfully discriminatory rates in violation of Section 202(a) of the Act⁴ as applied to Guam consumers.

GTE Pacifica's parent company, Verizon, has substantial operations in the continental U.S. which facilitates lower rates as well as the availability of beneficial nationwide calling plans in Guam. This will not be in the case with PTI, which will have no continental U.S. operations.

Not only did rate integration result in substantially decreased rates in Guam, but it led to the introduction of new products and services in the Guam marketplace on which many consumers have come to rely. One of the distinguishing features of the services and products is their general uniformity with continental U.S. offerings, thus creating significant benefits to Guam consumers.

If the sale of MTC to PTI is allowed, these products and services as well as the reduced rates at which they are priced will be lost to the Guam market. Since it lacks a continental U.S. rate base, PTI will not be required to sustain the same products and services which MTC did as a Verizon company. Instead, PTI will likely have no incentive to maintain these products and

³ See 47 U.S.C. § 254(g).

⁴ See 47 U.S.C. § 202(a).

services and would be permitted to select continental service offerings priced at higher rates into which to “integrate” its pricing.

The net effect of this will be that the lower rates resulting from rate integration will increase in Guam as consumers will no longer have access to those core Verizon services which allow the integrated, reduced pricing.⁵ This will enhance the disparities in product offerings and pricing available to consumers in Guam, resulting in unlawful and unjustified discrimination in violation of Sections 202(a) and 254(g) of the Act.

**B. The Applications Violate Section 214(a)
Of The Act And Therefore Must Be Denied**

Since the Applications fail to accurately characterize the proposed transaction as one constituting a service discontinuance, and fail to request proper authority under Section 214(a) of the Act, they must be denied.

Under Section 214, carriers are required to seek and obtain Commission approval prior to discontinuing, reducing, or impairing international or domestic services. According to Section 214(a):

No carrier shall discontinue, reduce, or impair service...unless and until they shall have obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.⁶

⁵ Notwithstanding the reductions, which rate integration has brought about, GTE Pacifica’s rates fall well short of complying with the rate integration requirement of Section 254(g). See Exhibit attached hereto (Comparison of Verizon Long Distance Calling Plans between Guam and other points served by Verizon). GTE Pacifica and Verizon should be required to fully comply with Section 254(g) before any sale of GTE Pacifica is allowed.

⁶ See 47 U.S.C. § 214(a). Moreover, the Commission has directed “carriers, and the industry as a whole, to develop systematic and effective approaches for ensuring that customers are given sufficient notice before their service is scheduled to be discontinued in the future. Adequate notice is necessary for customers to obtain the same or comparable services from alternate sources.” See Requirements For Carriers To Obtain Authority Before Discontinuing Service In Emergencies AND NorthPoint Communications, Inc. Authority To Discontinue Service, *Public Notice*, DA 01-1257, (May 22, 2001).

As alluded to above, the sale of GTE Pacifica to a company which has no continental U.S. rate base will necessarily result in the discontinuance or reduction of service offerings which have been available under Verizon's nationwide integrated service plans. As a direct result of rate integration, GTE Pacifica's service offerings in Guam consisted of attractive products and pricing. These products and associated pricing have benefited many consumers in Guam, and such consumers have come to depend upon the products and their associated rates. As explained above, it is a virtual certainty that PTI will have neither the incentive nor the ability to continue offering these product offerings and prices, largely because it lacks continental U.S. operations. As a result, many if not all of the GTE Pacifica services will be discontinued or reduced in Guam. The applicants either fail to recognize this, or have elected to minimize the significance of this reality in their Applications. Nonetheless, since the net effect of the proposed transaction will be a *de facto* discontinuance, reduction or impairment of service, the Applications must be denied as they fail to comply with Section 214(a) of the Act.

**C. The Domestic Cable Connecting Guam and the CNMI
Should Not Be Allowed to Fall Under Foreign Control**

Allowing foreign control over the fiber optic cable connecting Guam to the CNMI is not in the public interest.

The Submarine Cable Act gives the Commission the authority to take "the security of the United States" into account and determining whether to approve the Applications.⁷

The cable facility connecting Guam with the CNMI is a domestic U.S. (non-continental) cable situated at over 5,500 miles from the continental U.S. The cable connects two strategically

⁷ See 47 U.S.C. § 35; Delegation of Presidential functions. See also Ex. Or. No. 10530 of May 11, 1954, § 5(a), 19 Fed. Reg. 2709.

located U.S. insular areas, both of which have important military implications for the U.S. The cable constitutes the only non-satellite connectivity between these two points.

Allowing up to 72.1% foreign ownership with additional authority to increase that amount to 87.1% foreign ownership in this domestic, strategically located cable would be imprudent. Further, it does not appear that the Commission has ever authorized substantial foreign control over a domestic cable facility connecting two strategically located U.S. insular areas. To do so in the current post-9/11 environment when protection of U.S. security interests is of heightened importance would not be in the public interest.

D. The Public Notice Fails To Comply With The Notice Requirements Of Section 553(B) Of The Administrative Procedures Act

The Commission's Public Notice violates the Administrative Procedures Act ("APA") since, by failing to even mention Guam, it provides no effective notice to the public that the proposed transfer will impact consumers and businesses in Guam, as well as others with an interest in the Guam market.

Section 553(b) of the APA requires that an agency provide adequate notice of the subjects and issues involved in a rulemaking. The APA states that "General notice of proposed rule making shall be published in the Federal Register . . . The notice shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) *either the terms or substance of the proposed rule or a description of the subjects and issues involved.*"⁸ The Court of Appeals for the D.C. Circuit has held that Section 553(b) requires the Commission to "make its views known

⁸ 5 U.S.C. § 553(b) (emphasis added).

to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible.”⁹

The Public Notice only makes mention of GTE Pacifica’s operations in the CNMI and makes no mention of its operations in Guam. According to the Public Notice, “MTC is the incumbent local exchange carrier in the CNMI and wholly owns GTE Pacifica, doing business as Verizon Pacifica, which provides domestic and international telecommunications services in the CNMI through the use of cellular radiotelephone, satellite and cable facilities.”¹⁰ The Public Notice leads consumers and interested parties to believe that only telecommunications operations in the CNMI will be affected and that the proposed transaction will have no impact in Guam.¹¹

To the contrary, the proposed transfer of control will impact not only service offerings in Guam but the associated pricing for those offerings. Stated differently, residential and business consumers in Guam stand to be directly impacted. Additionally, the proposed sale of GTE Pacifica to PTI will entail the transfer of control of a submarine fiber optic cable, one end of which lands in Guam. Despite this, the Public Notice fails to anywhere mention Guam (despite directly mentioning the CNMI) such that interested parties (particularly those located in Guam) would have effective notice that the proposed sale would affect them. The Public Notice is thus insufficient under the requirements of the APA.

⁹ Home Box Office v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977); National Tour Brokers Ass’n v. United States, 591 F.2d 896, 899-900 (D.C. Cir. 1978).

¹⁰ Public Notice at 2.

¹¹ The importance of proper notice in the instant case should be given even greater weight considering the likelihood of reductions to, and discontinuance of, certain telecommunications services in Guam and the requirements of Section 214(a) of the Act. *See* Section II.B. *Supra*.

IV. CONCLUSION

As shown above, the applications are not in the public interest and should be denied.

Respectfully submitted,

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June 17, 2002